No.

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Supreme Court of the United States

OCTOBER TERM, 1951

No. 375

JULIUS BERNARD SHERMAN, PETITIONER,

vs.

JOSEPH E. RAGEN, WARDEN OF ILLINOIS STATE PENITENTIARY

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

PETITION FOR CERTIORARI FILED JUNE 9, 1951.

CERTIORARI GRANTED OCTOBER 8, 1951.

SUPREME COURT OF THE UNITED STATES

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[fol. 1] **IN THE SUPREME COURT OF ILLINOIS**

[Caption omitted]

[fol. 2] Notice of Motion for Writ of Error (Omitted in Printing)

[fol. 3] IN THE SUPREME COURT OF ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS, Defendant in Error

vs.

JULIUS BERNARD SHERMAN, Plaintiff in Error

PETITION FOR WRIT OF ERROR, TO THE CRIMINAL COURT OF COOK COUNTY UNDER THE POST-CONVICTION ACT—Received March 22, 1951.

To the Chief Justice and the Associated Justices of the Supreme Court of Illinois:

Comes now Julius Bernard Sherman, and prays this Honorable Court for relief from a judgment order of conviction and sentence rendered thereon out of the Criminal Court of Cook County, Illinois, on October 29, 1947, under indictment Nos. 47-548, 47-549, entitled People of the State of Illinois, plaintiff, vs. Julius Bernard Sherman, defendant, wherein the defendant was found guilty by the above named Court without a jury, and he was sentenced to 30 years in the Illinois State Penitentiary at hard labor.

This action is a purported Petition for Writ of Error under the provisions of the Illinois Post-Conviction Act (Ch. 38, Sec. 826-832, Ill. Rev. Stat. 1949) seeking review by this Court of an adverse judgment order rendered against the plaintiff in error in the above entitled cause, out of the Criminal Court of Cook County, Illinois, on Feb. 15, 1951, and known as Post-Conviction Case No. 88.

Opinion Below

The Criminal Court of Cook County, Illinois, rendered no opinion.

Its order on Feb. 15, 1951, dismissed the plaintiff in error Petition for Relief under the Post-Conviction Act on the motion of the State to strike the Petition and the Court entered an order dismissing the Petition on the grounds of failure

to constitute a s..owing of a substantial denial of the plaintiff in error Constitutional Rights in the trial which resulted in his conviction.

[fol. 4] The plaintiff in error in the instant case respectfully presents unto this Honorable Court that he is being held, detained and otherwise restrained of his liberty in violation of his Constitutional Rights which were denied him during his trial which resulted in his conviction as set forth in following:

Statement of the Case

On October 29, 1947, your petitioner, together with a codefendant by name of Edgar Williams, was tried and convicted by the Court without a jury trial having been waived, on two separate indictments (Indictment No. 47-548, charged Murder and Indictment No. 47-549 Robbery).

Petitioner was sentenced to two concurrent terms of thirty (30) years on the murder charge and ten (10) years to thirty (30) years on the robbery charge.

Honorable John F. Haas, Trial Judge.

Contention of Petitioner

Petitioner contends that he was deprived of his liberty and freedom in violation of the "due process of Law" clause and denied "the equal protection of the Laws" fundamental rights guaranteed him by the Fourteenth Amendment to the Constitution of the United States in the proceedings on October 19, 1947, which resulted in his conviction, by reasons as follows:

(1). He was denied the right to a fair and impartial trial, and was convicted on perjured evidence submitted on the State's behalf.

(2). He was convicted on perjured testimony given by witnesses for the State, whom had been bribed by State Officers to testify falsely against petitioner at the trial.

(3). He was denied the right to have witnesses to testify in his behalf at the trial.

(4). He is now being held illegally and unlawfully on false charges of which he is not guilty of committing; and makes a prima facie case of restraint of his liberty and freedom without "due process of law" in violation of the Fourteenth Amendment to the Constitution of the United States.

[fol. 5] Questions Presented

(1) Whether the Petition For Relief under the Post-Conviction Act made a sufficient showing of deprivation of liberty in violation of the Fourteenth Amendment to the Constitution of the United States to entitle the plaintiff in error to redress by the Criminal Court of Cook County.

(2) Whether this Court should vacate the order of the Criminal Court of Cook County, Illinois, dismissing the Petition For Relief, and *and* pass itself upon the merits of the plaintiff in error petition for Relief.

Statement to This Court

This Court is familiar with the provisions of the Post-Conviction Act. Ch. 38, Sec. 826-832, Ill. Rev. Stat., 1949.

In his petition For Relief to the Criminal Court of Cook County, the plaintiff in error in the instant case, alleged that substantial rights under both the Constitution of the United States and the Constitution of Illinois have been violated in the proceedings which resulted in his conviction.

If it might be permissible, plaintiff in error will dispense with argument on the merits of his alligations and in lieu of argument, he hereto attaches a copy of his original Petition For Relief (Post-Conviction Case No. 88). In the said Criminal Court of Cook County to this Pet-tion for Writ of Error, in order that this Court may pass upon the questions presented to this Court.

See Exhibit No. 2.

Wherefore, the plaintiff in error herein moves that this Court issue an order commanding that the Criminal Court of Cook County produce all the records in cause No. 47-548, 47-549, and all the Records and Matters relating to that cause before and after, in order that this Court may proceed in a summary manner to determine whither the allegations set forth by him in his Petition For Relief merits a determination by this Court under the pro-isions of law as in such case made and provided pursuant to the Illinois Post-Conviction Act.

Respectfully submitted, Julius B. Sherman, Plaintiff in Erroe.

[fol. 6] *Duly sworn to by Julius Bernard Sherman. Jurat omitted in printing.*

[fols. 7-8] Motion of Service omitted in printing.

[fol. 9] IN THE CRIMINAL COURT OF COOK COUNTY

PEOPLE OF THE STATE OF ILLINOIS, ex Rel. JULIUS BERNARD SHERMAN, Petitioner,

vs.

CRIMINAL COURT OF COOK COUNTY, STATE OF ILLINOIS, Respondent

Petition for Relief as Made and Provided Under the Post-Conviction Act. Ch. 38, Sec. 826-832, Ill. Rev. Stat. 1949

To The Honorable Chief Justice of the Criminal Court of Cook County, State of Ilinois:

MOTION FOR LEAVE TO FILE PETITION FOR RELIEF AS A POOR PERSON, WITHOUT PAYMENT OF COST, UNDER PROVISIONS OF THE POST-CONVICTION ACT—Received July 25, 1950

Now comes Julius Bernard Sherman, appearing pro se, and respectfully shows to the Honorable Court that he is the petitioner in the above entitled cause; that he is a citizen of the United States; that he is now illegally and unlawfully imprisoned in the Illinois State Penitentiary, Stateville Branch, located near Joliet, County of Will, State of Illinois, by virtue of process issued pursuant to a conviction obtained against him on October 29, 1947, in the Criminal Court of Cook County, State of Illinois.

Wherefore Julius Bernard Sherman, petitioner, in this behalf moves this Honorable Court for leave to file this petition for Relief under the general provisions of the Post-Conviction Act of Illinois, Ch. 38, Sec. 826-832, Illinois Rev. Stat. 1949, that he believes he has a meritorious cause for such action and is entitled to the redress he seeks; that he is a poor person without sufficient funds to pay the costs of this proceedings or give security therefor; that he be appointed competent counsel to prosecute this cause for him; and that he be allowed to prosecute this cause to a conclu-

sion as a poor person pursuant to the statute in such cause as made and provided.

[fol. 10] Petitioner will ever pray.

Respectfully submitted, Julius B. Sherman, Petitioner pro se:

Duly sworn to by Julius Bernard Sherman. Jurat omitted in printing.

(Received endorsement omitted.)

[fol. 11] IN THE CRIMINAL COURT OF COOK COUNTY, STATE OF ILLINOIS

[Title omitted]

ORIGINAL PETITION FOR RELIEF UNDER THE POST-CONVICTION ACT. CH. 38, SEC. 826-832, ILL. REV. STAT. 1949—Received July 25, 1950

Your petitioner Julius Bernard Sherman, appearing pro se, prays for relief under the specific provisions of the Post-Conviction Act of Illinois, approved August 4, 1949; Ch. 38, Sec. 826-832, Ill. Rev. Stat. 1949.

The said Act vests power and authority in this Court to issue process to vindicate rights, where it is made to appear that a substantial right guaranteed under the Constitution of the United States, or under the Constitution of the State of Illinois, or both, have been violated or denied the accused in the proceedings which resulted in his conviction.

Statement of the Case

On October 29, 1947, your petitioner, together with a co-defendant by name of Edgar Williams, was tried and convicted by the Court without a jury, jury trial having been waived, on two separate indictments (Indictment No. 47-548, charged Murder and Indictment No. 47-549 Robbery).

Petitioner was sentenced to two concurrent terms of thirty (30) years on the murder charge and ten (10) years to thirty (30) years on the robbery charge.

Honorable John F. Haas, Trial Judge

Contention of Petitioner

Petitioner contends that he was deprived of his liberty and freedom in violation of the "due process of law" clause and denied "the equal protection of the laws," fundamental rights guaranteed him by the Fourteenth Amendment to [fol. 12] the Constitution of the United States in the proceedings on October 19, 1947, which resulted in his conviction, by reasons as follows:

1. He was denied the right to a fair and impartial trial, and was convicted on perjured evidence submitted on the State's behalf.

2. He was convicted on perjured testimony given by witnesses for the State, whom had been bribed by State Officers to testify falsely against petitioner at the trial.

3. He was denied the right to have witnesses to testify in his behalf at the trial.

4. He is now being held illegally and unlawfully on false charges of which he is not guilty of committing, and makes a prima facie case of restraint of his liberty and freedom without "due process of law" in violation of the Fourteenth Amendment to the Constitution of the United States.

Jurisdiction

Petitioner now sues out this petition seeking relief from what he deems an illegal and unconstitutional imprisonment, and invokes the jurisdiction of this Court under the express provisions of the Post-Conviction Act, Ch. 38, Sec. 826-832, Ill. Rev. Stat. 1949, to issue process to vindicate the violation of his rights guaranteed by the United States Constitution.

The State's Case

Petitioner points out here that the facts in cause No. 47-548 constitutes the facts in Cause No. 47-549.

Petitioner further shows the Court that there was a third person named in connection with these charges by name of Willie Franklin.

He was tried separately and apart from Williams and petitioner; was convicted and received a sentence of one to two years imprisonment.

Williams received a sentence of "Life" imprisonment for murder and a term of ten (10) years to life on the Robbery charges.

In cause No. 47-548, the State charges that petitioner, with co-defendant Edgar Williams, murdered one George Bloom, on January 10, 1947, about 9:45 A.M. in a liquor store owned by him, known as the Tulane Liquor Store, located at 4711 Calumet Avenue, Chicago, Illinois, during a Robbery (Cause No. 47-549) in which $10.00 was taken from the cash drawer.

There was supposed to have been one eye witness to the crime and he was a colored fellow by the name of Hun Lee Booker, a porter employed in said liquor store and was said to have been at work in the store at the time of the murder and robbery.

Hun Lee Booker, State's witness testified in Court that, on January 10, 1947, he and Mr. George Bloom, the slain man and proprietor were the only persons in the liquor store when two men came into the said liquor store about 8:30 A.M. and said "All right this is a stick up."

[fol. 13] Booker, at this point of his testimony pointed out Williams and petitioner as the two robbers.

He placed his and Mr. Bloom's location behind the counter near the rear of the store.

Booker further testified that Williams stuck his gun in his face and ordered him (Booker) not to move, and in the meantime Mr. Bloom walked in the rear of him (Booker) going to the back part of the store and then Williams ordered him (Booker) to join Mr. Bloom, and proceeded to march the two of them to the rear of the store with him (Booker) leading the way and Mr. Bloom following him.

At this point of Hun Lee Booker's testimony counsel for petitioner, questioned Booker, as to where were his eyes while he was walking to the rear of the store, and this witness stated that he was looking directly at Williams, because Williams was pointing his gun directly into his face.

Booker further testified that when they got near the icebox in the store, Mr. Bloom reached for a bottle to hit Williams with, and Williams shot Mr. Bloom then.

This witness further stated that after Mr. Bloom was shot, he (Booker) grabbed Mr. Bloom, and slipped, and while on his knees begged the gun man not to shoot him too.

Again petitioner's attorney interrupted Booker and questioned him concerning what petitioner was doing while all

this was going on and witness stated that petitioner jumped over the counter and hit the cash-register.

At this point Booker readily admitted under questioning that he did not see petitioner hit the cash-register but, he heard the Cash-Register ring.

To this answer, petitioner's lawyer asked Booker, whether he got a good look at petitioner and the witness answered a direct "No".

Furthermore, Booker was asked by petitioner's attorney whether he was being paid to testify in this case against petitioner and the witness answered "Yes".

Another witness for the State was a Miss Classie Mann, the sweetheart of Willie Franklin, and referred to by the State's Attorney after the trial had begun as a "surprise witness."

This "surprise witness" testimony was irrelivant to the cause and is due to be severely criticised.

Miss Mann testified in behalf of the State that on the 10th day of January 1947, petitioner came by her home to pick up Willie Franklin.

In the face of this assertion of hers under oath, she readily admitted that she did not know petitioner's name (having learned it on the second day of the trial) nor did she see petitioner's face.

She claimed to have seen only the top of petitioner's head and the clothing he was wearing.

[fol. 14] Under cross-examination by petitioner's attorney, she too, admitted being paid money (U. S. Currency) by Police Officers of the City of Chicago, Illinois, to testify against petitioner.

When further questioned on this point, concerning the identity of the Police Officers who were paying her, unhesitatingly and unshamed, Miss Mann pointed her finger toward a table in the courtroom where two police officers were seated and pointed them out as the persons paying her, and called them by their names.

Concerning this fact, petitioner's attorney prevailed upon said "surprise witness" and had her to repeat this statement four times, whereupon he (attorney) inquired of the Court Reporter whether he recorded this statement as a matter of record, to which the court reporter answered in the affirmative.

Petitioner's Case

Your petitioner, Julius Bernard Sherman, was arrested at his place of employment, the W. F. Hall Printing Co., located at 4600 W. Diversy Blvd., about 8:30 P.M. on March 6, 1947, by four (4) Police Officers and was taken to the 48th Street Police Station, and detained therein on an open charge.

When arrested, petitioner demanded the reason for his arrest and was told by the Police that he was wanted as an accomplice to one Willie Franklin, concerning a Murder and Robbery which had been committed.

Petitioner denied complicity in said crime and also denied knowing this person or any person by the name of Willie Franklin and demanded to be shown him.

These Police officers claimed that they already had the said Willie Franklin in custody and further claimed that he had been, under arrest more than two weeks, but for some reason unknown to petitioner, Willie Franklin was not brought face to face with petitioner until about four (4) days after petitioner's arrest. (March 10, 1947.)

Petitioner states that during these four days, he was brutally beaten by the police officers with blackjacks and clubs and kicked with their feet in effoorts to make petitioner confess to these accusations.

On March 10th, 1947, or thereabout, when petitioner was brought face to face with him, Willie Franklin told the police that he did not know petitioner.

Whether he told them a different story afterwards is beyond petitioner's knowledge.

On the third night after his arrest, petitioner was compelled to make a private "show-up" in the 48th Street Police Station, before a white man and a colored man.

These two people did not identify petitioner as being the perpertrator of any crime against either of them, but, the police told them that petitioner was one of the men who helped to rob them and killed their boss.

The identity of these two men, petitioner learned afterwards were; The colored man was Hun Lee Booker, a porter employed at the Tulane Liquor store 4711 Calumet Avenue, Chicago, Illinois, and was supposed to have been in said store on January 10, 1947, with George Bloom, when two (2) fellows are supposed to have entered the liquor store about 8:45 A.M. on said day with drawn revolvers, and

ordered Mr. Bloom and said Hun Lee Booker to put up their hands. It is claimed that Mr. Bloom refused to obey the gunmen command and was shot to death by one of the robbers.

[fol. 15] Petitioner points out here again to this Court, that the porter Hun Lee Booker, could not and did not identify petitioner as one of the gunmen at this private show-up, as being one of the participants in said crime, and Hun Lee Booker was supposed to have been the sole eye-witness capable of identifying the robbers and the killers of George Bloom.

It was the police officers who pointed out petitioner as being one of the criminals in this heinous crime.

Petitioner further states that the brutality of the police officers did not stop after this "phony accusation."

They doubled their efforts and continued to beat and abuse petitioner for three more days trying to make him confess to the said crime, and also they continued to hold him on open charges and denied petitioner the right to call an attorney nor would they permit friends and relatives to see him.

On the seventh day after his arrest, petitioner, Williams and Willie Franklin were removed from the 48th Street Police Station and given a lie detector test. This said "Lie Detector Test" completely exonerated petitioner with any complicity in the crime alleged.

After the "Lie Detector Test" petitioner was returned again to the 48th Street Police Station, and then permitted to see friends for the first time since his arrest, seven days before.

Petitioner further states that on the seventh day after his arrest, Hun Lee Booker, the porter, and Harold Bloom, son of the slain man (George Bloom) whom was murdered on January 10, 1947, were summoned to the 48th Street Police Station, to listen to the reading of a purported confession, petitioner, Williams and Willie Franklin were supposed to have made, after seven days of unmerciful beatings and other brutalities by the police officers inflicted on the three suspects.

Your petitioner contends that this "so-called confession" on his part is phony and not true.

He points out to the Court that typed at the bottom of this "Phony confession" are his words as follows: (quote)

"I would rather not sign that confession, because it is not true."

He further shows this Court, that this fact and mention of the notation was revealed in court during his trial and is a part of the Record of the proceedings.

Petitioner further points out to this Court that after he was named in a warrant charging him with complicity in these crimes, and after he was transferred to the Cook County Jail to await Grand Jury action, he was examined by the Doctor of said jail who made notes of his condition and said Doctor found that petitioner had been beaten severely, with black and blue bruises covering the greater portion of petitioner's body.

This Doctor was subpoened to testify during the trial, and he described the condition of petitioner when he was committed to the Cook County Jail, and this Doctor revealed in open Court that petitioner had been brutally beaten. [fol. 16] This fact too, is a matter of record and can be found in the Transcript of the proceedings.

It was approximately after his arrest before petitioner was placed on trial.

Having appeared nine times before the Honorable Judge Roberts, who refused to try the case, because it "stunk", according to his version of the charge against petitioner; and he sent the case back to the Chief Justice, who assigned it to the above said Honorable John F. Hass, named herein and of Record as the Trial Judge.

May petitioner point out here, that after the trial got under way, he sat in the courtroom two days before his name was mentioned in connection with the proceedings, and then it was upon the inquiry of the Judge presiding, when he asked what part did petitioner play in the crime.

Thereupon, the prosecutor arose before the Court and stated that the State had a "surprise witness" to testify against petitioner.

Then the Court ordered and demanded of the prosecutor that this "so-called surprise witness" had better be produced in open court the following morning, or else he (Judge) was going to "throw" the case out of his courtroom.

True enough in compliance with the Court's edict, the prosecutor produced a woman, supposed to be the "surprise Witness", who is identified as Miss Classie Mann, the sweetheart of Willie Franklin and she testified under oath that she was being paid money (U. S. Currency) to testify against petitioner, and she pointed out the police officers who were present in the courtroom as being the persons paying her to testify.

Also this fact and her testimony is a matter of Record.

Petitioner contends that it was upon the bribed testimony given by Miss Mann and Hun Lee Booker, in other words their perjured testimony that he was convicted.

Petitioner states that he had never seen Miss Mann before in his life until that day in court when she was put on the Witness Stand as a witness for the State and against him.

Furthermore, that portion of her testimony asserting that petitioner came by her home on the morning of the alleged crime to pick up Willie Franklin is false and untrue and makes a prima facie case of perjury on the part of Miss Mann.

Petitioner further shows and points out to the court that the porter Hun Lee Booker, also testified that he was being paid for his part in the case.

Furthermore his testimony was so full of discrepancies and of such a contradictory character that it was plain and easy to see that he was being influenced by some person or persons and was given purjured testimony.

For instance, Booker testified in sum and substance that he did not get a good look at the man who took the money from the cash register, because the gunman who shot Mr. Bloom had him engaged.

[fol. 17] But it was the police officers theory that it was petitioner that took the money, and they paid Willie Franklin to say so.

Petitioner further states that he was the victim of su-prise on the part of State officers, because he was not definitely notified and informed when he was going to be tried.

Petitioner states that he was secretly placed on trial without an opportunity afforded him to notify his witnesses; therefore by such illegal and unconstitutional tactics practiced by State officers, he was deprived of a valid defense which probably would have established his innogence.

Referring to the evidence given by Hun Lee Boocker, where he testified that he was bribed to testify, may petitioner point out to this Court that the discrepancies and self-contradictions in his testimony establishes the fact that petitioner's conviction and present imprisonment is due to police influence; for instance, petitioner was pointed out to Hun Lee Booker by police officers as being one of the alleged robbers, and Hun Lee Booker was paid by said officers and told to testify to that effect, which was deliberate perjury.

Petitioner contends that he is completely innocent and not guilty of the charges and is now falsely imprisoned which constitutes restraint of his liberty without "due process of law" in violation of the Fourteenth Amendment to the United States Constitution.

Prior Litigation by Petitioner to Secure Relief

In ——, 1948, petitioner filed an original petition for a Writ of Habeas Corpus in the Criminal Court of Cook County, Illinois raising substantial questions under the "due process of law" clause of the Fourteenth Amendment.

In ——, 1949, the court denied the petition on the motion of the State's Attorney of Cook County, without holding a hearing and inquiring into the truth or falsity of petitioner's allegations.

Under Illinois law orders of a court denying petitions for Habeas Corpus are not subject to appellate review.

Petitioner then filed a petition for writ of certiorari in the United States Supreme Court, and he also sent a copy of his petition for writ of Habeas Corpus to that court for its consideration of the facts therein. (Docket No. 372 Misc., Sherman v. Ragen, U. S. Sup. Ct. October Term 1948.)

Certiorari was granted and the order of the Criminal Court of Cook County denying the petition was vacated, and by mandate of the United States Supreme Court, the case was sent back to the Criminal Court for hearing. (See: Young v. Ragen, — U. S. —.)

The United States Supreme Court in its opinion handed down on June 6, 1949, (Young v. Ragen) stated, *"as in other cases, we wish to be advised, if a hearing is again denied."*

The Criminal Court of Cook County, Illinois, on remandment of the case, appointed Mr. Edward Rothschild and Mr. Paul Stevens, attorneys to represent petitioner.

After vigorous and extensive arguments by these es-
[fol. 18] teemed attorneys in behalf of petitioner, the petition was again denied by Chief Justice Lynch in November 1949, without holding a hearing into the truth or falsity of petitioner's allegations.

The petition was dismissed on the ground that habeas corpus was not the proper remedy in said case.

Thereupon, in accordance with the Supreme Court of the United States opinion, and certain statements in Young v. Ragen, Attorneys Rothschild and Stevens, prepared and filed a petition for certiorari in the United States Supreme Court on January 29, 1950.

In the petition for certiorari the Court was advised of the conflicts in certain Courts of Illinois concerning the constitutionality of the Illinois Post-Conviction Act, approved August 4, 1949, and the United States Supreme Court was requested to withhold action on the petition for certiorari until a certain case was decided (People v. Dale) challenging the validity of said Act.

In May, 1950, the Act was declared constitutional by the Illinois Supreme Court, thus adopting a post-trial remedy for the relief of denials of due process.

Conclusion

This Court is familiar with the provisions of the Illinois Post-Conviction Act, Ch. 38, Sec. 826-832, Ill. Rev. Stat. 1949.

Your petitioner has alleged and set forth facts describing and showing denials and violations of substantial rights, privileges and immunities under both the Constitution of the United States and the Constitution of the State of Illinois in the proceedings which resulted in his conviction in the Criminal Court of Cook County, Illinois on October 29, 1947.

Wherefore, it is respectfully prayed that relief be granted under the general provisions of the Post-Conviction Act, and that petitioner have his day in court and the vindication of the protected guarantees of both State and Federal Constitutions.

Petitioner further prays that this court issue an order of subpoena duces tecum commanding all the Records, a complete transcript of the record and all proceedings had therein of this cause (No. 48-548, 48-549) produced in this

Court for review and determination, because of petitioner's lack of funds to procure them, as made and provided by provisions of the Post-Conviction Act.

It is prayed that petitioner may have such other and further relief in the premises as this Court may deem proper in order that law and justice may prevail.

Respectfully Submitted, Julius B. Sherman, Petitioner Pro Se., Box 1112, Joliet, Illinois.

[fol. 19] *Duly sworn to by Julius Bernard Sherman. Jurat omitted in printing.*

[fol. 20] Notice of Service of Copy of Petition (Omitted in Printing).

[fol. 21] In the Criminal Court of Cook County

[Title omitted]

Motion to Strike and Dismiss

Now comes the respondent, People of the State of Illinois, by John S. Boyle, State's Attorney of Cook County, Illinois, and respectfully moves the Court to strike the petition filed herein and to dismiss the proceeding for the following reasons:

1. Petitioner is barred from obtaining relief on the grounds alleged in his petition for the reason that the claims were conclusively adjudicated in full hearing to petitioner and decided against him, the claims therefore being res judicata and not within the jurisdiction of the Court to hear or to use as a basis for granting petitioner relief.

2. The allegations of a denial of petitioner's constitutional rights are mere conclusions, unaccompanied by affidavit of facts or documentary evidence having possible probative force sufficient to require an answer or hearing on any issue of denial of petitioner's constitutional rights in the proceedings which resulted in his conviction.

3. The facts alleged by petitioner would not, if true, constitute a showing of a substantial denial of petitioner's constitutional rights in the proceedings which resulted in his conviction.

Wherefore, respondent prays judgment that the petition be striken and the proceeding be dismissed, or, in the alternative, for time to answer.

People of the State of Illinois; John S. Boyle, State's Attorney of Cook County; Charles W. Corcoran, Assistant State's Attorney.

[fol. 22] In the Criminal Court of Cook County

[Title omitted]

Motion to Quash—Received August 29, 1950

Now come the petitioner, Julius Bernard Sherman, and respectfully states to this Honorable Court, that he is the petitioner in the above entitled cause now pending action in this Honorable Court, August 3, 1950. Whereas he (petitioner), now respectfully moves the Court to strike, and quash the motion entered on August 17, 1950, by the States Attorney, John S. Boyle, for the People of the State of Illinois, against the above entitled cause, for the following reasons;

1. The allegations as set forth in the petition of the above entitled cause, is based on; Denial of a fair and impartial trial, and confinement without due process of law in violation of the 6th, and 14th Amendments of the Constitution of the United States of America, and Section 2, and 9, of the Constitution of the State of Illinois, whereas the requirement is, that no person shall be deprived of his life, liberty, or property, without due process of law, nor shall any person be denied the equal protection of the law.
2. The brief, and facts as set forth in the petition of the above entitled cause, shows;

a. Four (4) counts of deliberate perjury, by State witnesses concerning the statement alleged to have been made by the Defendant.

[fol. 23] b. Two (2) counts of deliberate perjury, whereas the witness admit to the Court, that they are being paid United States (Currency) to testify in the State's behalf, and naming their bribers, one (1) of which, named a Mr. Harold, the other naming State Police Officers.

c. The Defendant shows in the petition of the above entitled cause, that he was held incommunicado a period of six (6) days whereas he (Defendant), was misused, and abused by the police officers during part of the six (6) days, in efforts to make the Defendant sign the statement made out by them.

These facts as presented in the petition of this cause, all constitute a denial of, Due Process, Equal protection, and a fair and impartial trial, as is guaranteed by the Constitution of the United States of America, to each and every person.

3. Whereas a persons Constitution rights has been violated, the State Court's equally with Federal Courts, are under an obligation to guard and enforce every right secured by the Federal Constitution.

Wherefore, the petitioner, Julius Bernard Sherman, of P.C. 88, respectfully prays, that the motion entered against this cause on August 17, 1950, by the State, be striked, and quashed, by virtue of the above stated reasons, in order that law, and Justice may prevail.

Respectfully submitted, Julius B. Sherman, Petitioner, Pro Se.

[fol. 24] Notice of Service of copy of Motion to Quash (Omitted in Printing).

[fol. 25] In the Criminal Court of Cook County

[Title omitted]

Amended Petition—Received November 9, 1950

Your petitioner, the people of the State of Illinois, on the relation of Julius Bernard Sherman, appearing pro se. now comes by Amended Petition herein, same to have the same force, power and authority as though originally filed herein, and alleges unto this Honorable Court:

(1) That this Amended petition is hereto made part of the above entitled cause as fully and completely as though pleaded herein.

(2) That the reason for such Amendment to the original petition is to raise ten (10) questions not heretofore presented in the original petition.

(3) Perjured evidence submitted on the State's behalf by police officers, Carl Nelson (In transcript—pages 163, 165, 166).

(4) Perjured evidence submitted on the State behalf by police officer.

(4) James Foster (In transcript—pages 168, 169, 170).

(5) Perjured testimony given by witness for the State (Hun Lee Booker). In Transcript—page- 2 to 32.

(6) How police officer Louis Cella found the guns without producing the owners of guns in Court (In transcript page 211, to 221).

(7) Perjured testimony given by witness for the State (Classie Mann). In transcript page- 170 to 179.

(8) How Willie Franklin was instructed by his attorney to not take witness stand in my behalf. (In transcript page- 124, 125.)

[fol. 26] (9) How Willie Franklin was tried seperate for Robbery and Murder, and received a sentence of 1 to 2 years in prison.

(10) How Willie Franklin helped police officer find said guns. (In transcript page- 211 to 221.)

(11) How I was held in police station being beat for three days before signing phony confession. (In transcript page- 63 to 69.)

(12) Why? I was denied the right to call my witness to testify in my behalf.

It is prayed that petitioner may have such other and further relief in the premises as this Court may deem proper in order that law and justice may prevail.

Respectfully submitted, Julius Bernard Sherman,
Petitioner pro se, Box 1112, Joliet, Illinois.

[Received endorsement omitted.]

Duly sworn to by Julius Bernard Sherman. Jurat omitted in printing.

[fol. 27] Notice of Service of Copy of Amended Petition to State's Attorney in and for Cook County (omitted in printing).

[fol. 28] IN THE CRIMINAL COURT OF COOK COUNTY

[Title omitted]

AMENDED MOTION

Now comes the respondent, People of the State of Illinois, by John S. Boyle, State's Attorney of Cook County, Illinois, and respectfully moves the Court to strike the following claims and allegations of the petition, to-wit:

1. That all of petitioner's allegations that perjured testimony was used against him be stricken, as the question of perjured testimony is not an issue of a substantial denial of a constitutional right, the claim of perjured testimony being a question of fact implicitly determined in the trial judgment of guilt or innocence.

2. That all of petitioner's allegations of the knowing use of perjured testimony be stricken as unsubstantiated conclusions of the petitioner and, moreover, conclusions and inferences of petitioner based only on statements which were made by witnesses at his trial, petitioner's conclusions thus being contrary to the judgment of the Court on the same facts on which petitioner now seeks to reverse the said judgment, and petitioner's claims thus being *res judicata*;

3. That the allegation of coercion in regard to petitioner's confession be stricken for the reason that this claim was litigated at his trial and decided against him, the issue therefore being *res judicata* and petitioner therefore being barred from obtaining—and the Court having no jurisdiction to grant or to use as a basis for relief to petitioner—another hearing on the same issue and the same or cumulative evidence.

4. That petitioner's claim that he was denied the right to have witnesses to testify in his behalf at his trial be stricken as a mere conclusion, for petitioner does not allege that he or his counsel made any attempt to use court process or that any such attempt was denied him by an officer of the Court.

5. That petitioner's claim that he was secretly placed on trial be stricken as a mere conclusion, for petitioner does [fol. 29] not show any facts to substantiate this claim, and for the further reason that in the absence of a showing that petitioner made an objection to the commencement of his

trial, it is presumed that he and his counsel answered or indicated the readiness of petitioner for trial.

Wherefore respondent moves that the petition as amended be stricken and that the proceeding be dismissed.

People of the State of Illinois, John S. Boyle, State's Attorney of Cook County. Charles W. Corcoran, Assistant State's Attorney.

[fol. 30] In the Criminal Court of Cook County

[Caption omitted]

[Title omitted]

Order Dismissing Petition—February 15, 1951

This day come the said People by John S. Boyle, State's Attorney and the said Petitioner by his Counsel also comes.

Counsel for said Petitioner now here moves the Court to Quash the State's Petition to Dismiss said Petition.

And the Court hearing Counsel in support of said motion as well as in opposition thereto and being fully advised in the premises doth overrule said motion and orders that said motion be and the same is hereby overruled accordingly.

And the Court hearing Counsel in support of the State's Motion to Strike Petitioner's Amended Petition, heretofore entered herein, as well as in opposition thereto and being [fol. 31] fully advised in the premises doth sustain said motion and orders that said motion be and the same is hereby sustained accordingly.

And it is ordered by the Court that Petitioner's Petition be and the same is hereby dismissed.

[fol. 32] (Clerk's certificate to foregoing transcript omitted in printing.)

[fol. 33] IN THE SUPREME COURT OF ILLINOIS

[Title omitted]

ORDER DISMISSING PETITION FOR WRIT OF ERROR—May 24, 1951

And now, on this day, the Court having duly considered the motion for leave to file a writ of error under the Post Conviction Hearing Act as a poor person and for leave to file ten typewritten copies of abstract and brief, and being now fully advised of and concerning the premises; doth allow the motion to sue as a poor person. It is further considered by the Court that after having examined and reviewed the petition and record in the post conviction hearing the same is found to disclose no violation or denial of any substantial constitutional rights of the petitioner under the constitution of the United States or of the constitution of the State of Illinois, and the petition for writ of error on post conviction hearing is accordingly dismissed; also, petitioner granted leave to withdraw petition, if requested.

[fol. 34] IN THE SUPREME COURT OF ILLINOIS

CLERK'S CERTIFICATE

I, Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois, and keeper of the records and Seal thereof, do hereby certify the foregoing to be a true copy of the record of this Court in a certain cause entitled: No. 1154, People State of Illinois, Defendant in Error, vs. Julius Bernard Sherman, Plaintiff in Error, Error to Criminal Court, Cook County, P.C. 88, filed in this office on a petition for writ of error under the Post Conviction Hearing Act the 14th day of April, A.D. 1951, the record of the Criminal Court of Cook County having been presented to the Court, with said petition. In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said Court this 9th day of August, A.D. 1951.

Earle Benjamin Searcy, Clerk, Supreme Court of the State of Illinois. (Seal.)

[fol. 35] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 29, Misc.

[Title omitted]

ORDER GRANTING CERTIORARI—October 8, 1951

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transfered to the appellate docket as No. 375, placed on the summary docket, and assigned for argument immediately following Nos. 95 and 96, Jennings vs. People of the State of Illinois, and La Frana vs. People of the State of Illinois.